

Message Text

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61

ORIGIN STR-01

INFO OCT-01 SS-14 ADP-00 EB-03 CIEP-01 AGR-03 COME-00

TRSE-00 CIAE-00 INR-10 NSAE-00 RSC-01 L-03 EUR-10

OMB-01 NSC-10 NSCE-00 (ADP-00,) R

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APPROVED BY STR/RBRUNGART

STR:WEBERLE (DRAFT)

E:WCASEY

CIEP:PFLANIGAN

AGRICULTURE:GWHITE

COMMERCEJFORREST

TREASURY:JMCFADDEN

S/S-MR. GAMMON

----- 103496

R 251748Z AUG 73

FM SECSTATE WASHDC

TO AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY THE HAGUE

AMEMBASSY LUXEMBOURG

AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY ROME

USMISSION EC BRUSSELS

INFO USMISSION GENEVA

USMISSION OECD PARIS

C O N F I D E N T I A L STATE 169850

LIMDIS

TO AMBASSADOR FROM CASEY AND EBERLE

E.O. 11652: GDS

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TAGS: ETRD, GATT, US, EC

SUBJECT: ARTICLE XXIV:6 NEGOTIATIONS

REF: GENEVA 3953

1. U.S. ARTICLE XXIV:6 NEGOTIATIONS WITH EC HAVE NOW BEEN UNDERWAY FOR OVER EIGHT MONTHS, AND EC HAS NOT YET MADE ADEQUATE OFFER OF COMPENSATION FOR TARIFFS UNBOUND AND RAISED BY UK, DENMARK, AND IRELAND AS RESULT THEIR JOINING EC. AS YOU KNOW, EC COMMISSION IS TRYING TO WORK OUT NEW GLOBAL PACKAGE OF OFFERS FOR ALL 24:6 CLAIMANTS, INCLUDING U.S., BUT IS ENCOUNTERING RESISTANCE FROM SOME MEMBER COUNTRIES. THERE ARE ALSO REPORTS SOME EC MINISTERS DO NOT CONSIDER U.S. HAS VALID CLAIM, BUT ARE WILLING, IN PRINCIPLE, TO FIND A SETTLEMENT. ACCORDINGLY, WE BELIEVE DIRECT APPROACH BY AMBASSADORS IN EC COUNTRIES IS NOW CALLED FOR TO IMPRESS UPON EC MINISTERS POLITICAL IMPORTANCE OF MATTER, STRONG BASIS OF U.S. CASE, BOTH IN GATT JURIDICAL TERMS AND IN TERMS DIRECT EFFECT ON U.S. TRADING INTERESTS AND NEED FOR A BETTER GLOBAL PACKAGE.

2. AMBASSADOR OR CHARGE SHOULD MAKE REPRESENTATION TO APPROPRIATE MINISTER (AND EMBASSY OFFICERS TO OTHERS AS APPROPRIATE) AS SOON AS POSSIBLE BUT NOT LATER THAN SEPTEMBER 5. A NOTE (SEE TEXT BELOW) SHOULD ALSO BE LEFT. (EC PERMREPS WILL RESUME WORK ON PACKAGE OF OFFERS ABOUT SEPTEMBER 3. MATTER WILL ALSO BE DISCUSSED IN CORRIDORS AT TOKYO GATT MINISTERIAL MEETING WEEK OF SEPTEMBER 10 ALTHOUGH IT IS NOT ON AGENDA.)

3. PRESENTATION SHOULD MAKE CLEAR OUR APPRECIATION THAT EC IS FINALLY TRYING TO WORK OUT AN ACCEPTABLE PACKAGE, AND SHOULD OUTLINE U.S. CASE AS SET FORTH BELOW, STRESSING THAT SATISFACTORY SOLUTION IS OF MAJOR POLITICAL IMPORTANCE BOTH FOR OVERALL US-EC RELATIONS AND DOMESTICALLY. FAILURE TO SETTLE NEGOTIATION COULD SIGNIFICANTLY STRENGTHEN POSITION OF PROTECTIONIST ELEMENTS WISHING TO RAISE CERTAIN U.S. BARRIERS TO TRADE AND LESSEN ABILITY OF THE U.S. TO OBTAIN A SATISFACTORY MANDATE FOR THE MULTILATERAL TRADE NEGOTIATIONS. EQUITABLE SETTLEMENT, ON THE OTHER HAND, WOULD STRENGTHEN US-EC RELATIONS WITH FAVORABLE EFFECT
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ACROSS THE BOARD, HELP TO LAY GROUNDWORK FOR SUCCESSFUL TRADE NEGOTIATIONS, AND ENCOURAGE EFFORTS IN U.S. TO EXPAND WORLD TRADE.

4. TEXT OF NOTE (COMPLIMENTARY OPENING AND CLOSING OMITTED) FOLLOWS:

A. THE U.S. WARMLY WELCOMED THE ENLARGEMENT OF THE EC TO INCLUDE THE UK, DENMARK, AND IRELAND. WE TOOK THIS POSITION WITH FULL KNOWLEDGE THAT THE ENLARGEMENT OF THE COMMUNITIES WOULD DISADVANTAGE SOME U.S. EXPORT PRODUCTS. THE GATT NEVERTHELESS IMPOSES ON THE COMMUNITY CERTAIN OBLIGATIONS ARISING OUT OF ITS ENLARGEMENT. THESE DO NOT

INCLUDE, AND THE U.S. DOES NOT CLAIM, COMPENSATION FOR THE ELIMINATION OF DUTIES AMONG THE MEMBER STATES OF THE COMMUNITY. BUT WE DO ASK THAT THE COMMUNITY HONOR ITS GATT OBLIGATIONS WITH REGARD TO THE UNBINDING (WITHDRAWAL OF THE COMMITMENT NOT TO INCREASE A DUTY) AND RAISING OF DUTIES PREVIOUSLY BOUND TO THIRD COUNTRIES. WE BELIEVE A REASONABLE AND EQUITABLE SETTLEMENT WOULD CONTRIBUTE TO THE ABILITIES OF CONTRACTING PARTIES TO OBTAIN SATISFACTORY MANDATES FOR FURTHER MULTILATERAL TRADE NEGOTIATIONS UNDER THE AUSPICES OF GATT AND WOULD HELP TO LAY THE GROUNDWORK FOR THE SUCCESS OF THESE NEGOTIATIONS.

B. THE U.S. HAS A STRONG JURIDICAL BASIS UNDER GATT FOR ITS CLAIM TO COMPENSATION. GATT CONTAINS TWO REQUIREMENTS CONCERNING THE TARIFFS OF A NEW CUSTOMS UNION: (1) ARTICLE XXIV:5(A) SPECIFIES THAT THE LEVEL OF PROTECTION OF A NEW CUSTOMS UNION MUST NOT ON THE WHOLE BE HIGHER THAN THOSE OF THE CONSTITUENT TERRITORIES. WHETHER THE LEVEL OF PROTECTION OF THE NINE MEETS THIS REQUIREMENT IS A SEPARATE UNRESOLVED QUESTION UNDER CONSIDERATION IN GATT AND IS NOT THE SUBJECT OF CURRENT BILATERAL EC-US DISCUSSION OR NEGOTIATION. (2) ARTICLE XXIV:6, TOGETHER WITH ARTICLE XXVIII TO WHICH IT REFERS, ENVISAGES THE OFFER OF ADEQUATE COMPENSATION IN CASES WHERE PREVIOUSLY BOUND DUTIES ARE TO BE RAISED OR UNBOUND. THIS GATT PROVISION IS A RECOGNITION THAT TARIFF BINDINGS HAVE BEEN PAID FOR IN PREVIOUS TRADE NEGOTIATIONS, AND THAT A COUNTRY CAN BE SERIOUSLY DISADVANTAGED IF BINDINGS OF PARTICULAR INTEREST

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TO IT ARE WITHDRAWN EVEN IF ON AVERAGE THE OVERALL TARIFF LEVEL OF THE NEW CUSTOMS UNION IS NOT INCREASED.

C. THE GATT PROVISIONS CALL FOR A NEGOTIATED SETTLEMENT BETWEEN THE PARTIES CREATING A NEW CUSTOMS UNION AND ANY PARTY AFFECTED BY THE WITHDRAWAL OF BINDINGS. IN THE ABSENCE OF AGREEMENT, ANY PARTY WITH AN INTEREST IN BINDINGS PROPOSED FOR WITHDRAWAL IS FREE TO MAKE EQUIVALENT COMPENSATORY WITHDRAWALS (I.E., TO SEEK TO RE-ESTABLISH A BALANCE OF CONCESSIONS).

D. THE UK, DENMARK, AND IRELAND ARE ADOPTING THE CXT OF THE SIX, AND MANY OF THE BINDINGS THE U.S. HAD EARLIER NEGOTIATED WITH THEM (AND PAID FOR) ARE PROPOSED FOR WITHDRAWAL. IN MANY CASES THIS HAS SERIOUS PREJUDICIAL IMPLICATIONS FOR U.S. TRADE INTERESTS, BOTH INDUSTRIAL AND AGRICULTURAL. OVER 850 INDUSTRIAL ITEMS FORMERLY BOUND IN THE SCHEDULES OF THE THREE WITH A TRADE COVERAGE TO THE U.S. OF OVER \$600 MILLION WILL FACE HIGHER DUTIES WITH THE ENLARGEMENT OF THE EC, THUS SUBSTANTIALLY REDUCING U.S. EXPORT POSSIBILITIES. IN AGRICULTURE, THE EC PROPOSES TO REPLACE BINDINGS ON \$72 MILLION OF U.S. EXPORTS TO THE

THREE IN THE AGREED 1970/71 BASE PERIOD BY NEW BINDINGS AT HIGHER RATES OF DUTY. IN ADDITION, THE EC PROPOSES TO WITHDRAW WITHOUT REPLACEMENT BINDINGS ON ITEMS WHICH ACCOUNT FOR \$225 MILLION. MOST OF THESE ITEMS WILL FACE THE VARIABLE LEVY SYSTEM OF PROTECTION WHICH WILL MEAN THAT THE U.S. WILL BE ONLY A RESIDUAL SUPPLIER. IT IS THUS CLEAR THAT THE PROPOSED INCREASES IN TARIFFS ON BOUND ITEMS IS SUBSTANTIAL AND CAN BE EXPECTED TO HAVE A SERIOUS EFFECT ON U.S. TRADE, BOTH OVERALL AND IN PARTICULAR FOR CERTAIN SPECIFIC PRODUCTS OF HIGH U.S. EXPORT INTEREST.

E. AS COMPENSATION, THE EC HAS PROPOSED MERELY TO BIND FOR THE COMMUNITY OF NINE THE PRESENT TARIFF SCHEDULE OF THE COMMUN

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LONDON

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